

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

STEVE STROMAN,

Petitioner,

-v.-

9:03-CV-0068
(TJM)(DRH)

JOE T. SMITH,

Respondent.

APPEARANCES:

OF COUNSEL:

STEVE STROMAN
Petitioner, *pro se*

HON. ELIOT SPITZER
Office of Attorney General
State of New York
Department of Law
The Capitol
Albany, NY 12224

BRIDGET ERIN HOLOHAN, Esq.
Assistant Attorney General

DAVID R. HOMER, U.S. MAGISTRATE JUDGE

ORDER

Presently before this Court is a request from Attorney Morabito, on behalf of petitioner Steve Stroman ("petitioner" or "Stroman"), to lift the stay in this habeas proceeding, and requesting that the Court decide the original petition on its merits. See Dkt. No. 27. Respondent has filed a response to the original petition, and has filed the state court records. Dkt. Nos. 9-10.

This Court stayed this action so that petitioner could pursue a motion pursuant to CPL §440. Dkt. No. 14. Thereafter, in response to an Order from Judge McAvoy directing petitioner to show cause why the petition should not be dismissed for failure to prosecute (Dkt. No. 23), Attorney Morabito filed a letter requesting additional time for

him to review petitioner's state court proceedings and advise petitioner on a proper course of action. Dkt. No. 24. Counsel made a second request for additional time to review petitioner's case on October 18, 2005, which was granted. Dkt. No. 26. Attorney Morabito has now filed a letter requesting that the pending petition be decided by this Court on its merits. Dkt. No. 27. No results of additional state court proceedings have been filed, and there is no motion to amend the petition presently before the Court. Therefore, the case will proceed on the original petition filed by petitioner.

Accordingly, the stay imposed on this action may now be lifted and this matter may be permitted to proceed.


WHEREFORE, it is hereby

ORDERED, that the stay imposed in this action be lifted, and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: January 11, 2006


David R. Homer
U.S. Magistrate Judge